

**Objection Deadline: November 9, 2010 at 5:00 p.m.
Hearing Date: November 16, 2010 at 2:00 p.m.**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)
CIRCUIT CITY STORES, INC., ET AL.,) Case No. 08-35653
Debtors.) Chapter 11
) Jointly Administered
)
)
)

**MOTION OF MARBLEGATE ASSET MANAGEMENT, LLC
FOR ALLOWANCE AND PAYMENT
OF ADMINISTRATIVE EXPENSE CLAIM**

Marblegate Asset Management, LLC (“Marblegate”), the investment manager of Marblegate Special Opportunities Master Fund LP (“Marblegate Master Fund”), by and through its undersigned counsel, hereby moves the Court for the entry of an Order, pursuant to sections 503(a) and 503(b) of the United States Bankruptcy Code (the “Bankruptcy Code”), directing the allowance and payment of Marblegate Master Fund’s administrative expense claim in the amount of \$3,874,428.88 for goods received by Circuit City Stores, Inc. (“Circuit City”) within twenty days prior to the filing of Circuit City’s bankruptcy petition. In support of its Motion, Marblegate respectfully states as follows:

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JURSIDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On November 10, 2008 (the “Petition Date”), Circuit City and its affiliated debtors (collectively, the “Debtors”) filed their voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division.

3. On September 8, 2010, the Court confirmed the Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and Its Affiliated Debtors and Debtors in Possession and Its Official Committee of Creditors Holding General Unsecured Claims (the “Plan”).

4. Article III.A.1 of the Plan provides, in pertinent part, that allowed administrative claims shall be paid “on, or as soon as reasonably practicable after the Distribution Date immediately following the date an Administrative Claim becomes an Allowed Administrative Claim”

5. Prior to the Petition Date, Eastman Kodak Company (“Kodak”) sold and delivered goods to Circuit City in the ordinary course of Circuit City’s business. Specifically, within twenty days of the Petition Date, Kodak sold and delivered at least \$3,874,428.88 worth of goods to Circuit City (collectively, the “20-Day Goods”). Attached hereto as Exhibit A, and incorporated herein by reference, is a copy of the Kodak proof of claim seeking payment for the 20-Day Goods (the “Kodak Administrative Expense Proof of Claim”).

6. On March 12, 2010, Marblegate Master Fund filed a Notice of Transfer with the Bankruptcy Court [Docket No. 6830] evidencing its February 3, 2010 purchase of the Kodak Administrative Expense Proof of Claim.

7. Despite a number of informal requests by both Marblegate and Kodak, Circuit City has neither acknowledged its obligation to pay in full for the 20-Day Goods, nor provided any date certain by which Circuit City will file any objection to the Kodak Administrative Expense Proof of Claim. Marblegate thus seeks entry of an order (i) allowing the Kodak Administrative Expense Proof of Claim pursuant to sections 503(a) and 503(b)(9) of the Bankruptcy Code, and (ii) directing Circuit City to pay Marblegate Master Fund, as soon as practicable, but no later than the effective date of any confirmed plan of reorganization in the Debtors' cases, at least \$3,874,428.88 on account of the Kodak Administrative Expense Proof of Claim.

ARGUMENT

8. Section 503(b)(9) of the Bankruptcy Code states:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including:

...

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 USC § 503(b)(9).

9. Pursuant to the plain language of section 503 of the Bankruptcy Code, Marblegate Master Fund is entitled to an allowance of its claim as an administrative claim. Further, pursuant to Article III.A.1 of the Plan, allowed administrative claims must be paid "on, or as soon as

reasonably practicable after the Distribution Date immediately following the date an Administrative Claim becomes an Allowed Administrative Claim”

NO PRIOR REQUEST

10. No previous motion for the relief sought herein has been made by Marblegate or Marblegate Master Fund to this or any other Court.

WAIVER OF MEMORANDUM OF LAW

11. Marblegate respectfully requests that the Bankruptcy Court treat this motion as a written memorandum of points and authorities and waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as required by Local Bankruptcy Rule 9013-1(G). Marblegate reserves its right to file a brief in reply to any objection to this Motion.

RESERVATION OF RIGHTS

12. Marblegate and Marblegate Master Fund reserve all of their respective rights, claims, counterclaims, defenses, and remedies under the Bankruptcy Code and other applicable law.

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WHEREFORE, Marblegate respectfully requests that the Court issue an order, substantially in the form attached hereto as Exhibit B: (i) allowing the Kodak Administrative Expense Proof of Claim pursuant to 11 U.S.C. §§ 503(a) and 503(b)(9) in the amount of at least \$3,874,428.88 for Goods shipped to Circuit City within twenty days of the filing of the Petition; (ii) directing Circuit City to pay Marblegate Master Fund, as soon as practicable, but no later than the effective date of any confirmed plan of reorganization in the Debtors' cases, at least \$3,874,428.88 on account of its administrative expense claim; and (iii) granting such other and further relief as the Court deems just and proper.

Date: October 18, 2010

MARBLEGATE ASSET MANAGEMENT, LLC

By: /s/ Robert S. Westermann
Counsel

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Counsel for Marblegate Asset Management, LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2010, a true and complete copy of the foregoing Motion with all Exhibits was filed and served electronically using the Bankruptcy Court's CM/ECF System and was sent by first class mail, postage prepaid, to the parties below at the addresses indicated:

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